

MASTER AGREEMENT TO LEASE

for

ENHANCED USE LEASES

INSTALLATION
(Site Name)

between

UNITED STATES OF AMERICA,

Acting by and through the SECRETARY OF THE ARMY

as the Government

and

Developer Name

as the Developer

Dated as of _____, 200

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EXHIBIT B	Form of Ground Lease
EXHIBIT C	Development Concept Plan
EXHIBIT D	Form of Declaration
EXHIBIT E	Title Commitment
EXHIBIT F	Location of Alternative Access (an exhibit as needed)
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MASTER AGREEMENT TO LEASE

This MASTER AGREEMENT TO LEASE is entered into as of this ____ day of _____ 200█ (this "Agreement") by and between the UNITED STATES OF AMERICA (the "Government"), acting by and through the SECRETARY OF THE ARMY (the "Secretary"), and Developer, L.L.C., a State limited liability company or other corporate structure (the "Developer").

RECITALS:

R-1. The Government owns that certain parcel (or those certain parcels) of land (the "Project Site") located within the Installation, Name County, State as more particularly described in **Section 2.1** hereof and **Exhibit A** attached hereto. Pursuant to Title 10, United States Code, Section 2667 (the "Enabling Statute"), the Secretary has determined that the Project Site constitutes underutilized property and issued a Notice of Intent to Lease ("NOL") seeking to identify qualified parties interested in developing the Project Site in accordance with the Enabling Statute.

R-2. Pursuant to the NOL process, Developer was selected to be the developer of the Project Site; and the Government and Developer are entering into this Agreement in order to set forth the terms and conditions under which Developer is to develop the Project Site.

R-3. The Project Site is intended to be developed with multiple buildings, each of which will be on a separate building site located within the Project Site and leased to Developer or another Ground Tenant (hereinafter defined) under a Ground Lease (hereinafter defined). While Developer currently has a general idea of the location of the various building sites (which is attached hereto as **Exhibit C**), each parcel of property comprising the Lease Premises (hereinafter defined) under each Ground Lease will ultimately constitute a building site and will be determined by Developer as hereinafter provided and may be comprised of one or more or a portion of one or more of the currently contemplated building sites. Each such Lease Premises is intended to be developed with certain improvements to be determined from time to time by Developer. This Agreement shall provide the process for the approval of any initial improvements. The Ground Lease shall govern any subsequent additions, alterations or modifications thereto and any subsequent or additional improvements (i.e. Additional Improvements, as defined in the form of Ground Lease). Any and all references herein to "improvements" on a Leased Premises or the Project Site, or words of similar import, shall refer to any and all improvements, additions, modifications and alterations in, on or to the subject property, including without limitation as applicable any Improvements, Additional Improvements and Infrastructure Improvements. All of the land comprising the Project Site, together with the improvements constructed or to be constructed thereon (including without limitation, the Infrastructure Improvements (as hereinafter defined) to be developed thereon, are hereinafter collectively referred to as the "Project".

R-4. Developer contemplates that the Project will be developed as _____, including without limitation _____ use. Developer also expects to make various long term investments in the Project which Developer can only recover through proceeds of the entire constructed Project, which investments may

include without limitation engineering, design, construction and due diligence costs, construction of Infrastructure Improvements (hereinafter defined). (mention any access improvements as applicable per sections 3.5 and 3.51)

R-5. Pursuant to the Enabling Statute, the Secretary has determined that this Agreement (and the terms and conditions set forth herein) and the Ground Leases (and the terms and conditions set forth therein) are advantageous to the United States and are in the public interest.

R-6. Except as otherwise provided in this Agreement with respect to certain improvements (Infrastructure Improvements), prior to the commencement of the construction of any Improvements on any building site, the Government, as "Ground Lessor" thereunder, and the Developer, or another Approved Ground Tenant (as defined in **Section 1.2.1**, below) (the tenant under the Ground Lease, whether the tenant is the Developer or another Approved Ground Tenant, is referred to in this Agreement as the "Ground Tenant") will enter into a long-term ground lease for Lease Premises (as defined in **Section 1.2.3**, below) comprising the building site substantially in the form of **Exhibit B** attached hereto (each a "Ground Lease").

R-7. The Project Site is also comprised (in addition to the individual building sites) of certain parcels of land adjacent to, between and around the building sites intended to be improved with new streets, utility lines, storm water detention facilities, other such improvements, and including areas of open space (the "Infrastructure Improvements") that will provide, *inter alia*, on a non-exclusive basis, pedestrian and vehicular ingress and egress to and from, and utility service to, each Lease Premises and the improvements constructed, or to be constructed, thereon. **Exhibit C** attached hereto depicts a current general concept plan of such Infrastructure Improvements, but such plan is subject to change at Developer's sole discretion.

R-8. It is contemplated that main access to the Project Site will be by way of _____.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the Government and the Developer agree as follows:

ARTICLE 1

Agreement to Enter Into Ground Leases

1.1 Agreement to Enter Into Ground Leases. Subject to the terms and conditions of this Agreement, the Government and the Developer agree that, after Developer has identified a portion of the Project Site comprising the Lease Premises to be developed and Developer has delivered to the Government a Notice of Closing and a description of such Lease Premises, the Government and a Ground Tenant shall enter into a Ground Lease demising such Lease Premises on the Designated Closing Date (defined in **Section 4.1**, below) for such Ground Lease upon the terms and conditions (as completed in accordance with **Section 1.2**, below) set forth in the form of Ground Lease attached hereto as **Exhibit B**. Capitalized terms not otherwise defined herein shall be deemed to have the meanings set forth in said form of Ground Lease. The term of this Agreement shall expire on the date (the "Expiration Date") that a Ground Lease has been executed for each portion of the Project Site on which Developer desires to construct Improvements and all such Ground Leases have expired or been terminated.

1.2 Terms of Lease to be Finalized. The parties acknowledge that, prior to each Designated Closing Date, certain blanks must be filled in and exhibits attached to the form of Ground Lease to be entered into at such Designated Closing Date. The terms of each Ground Lease and exhibits thereto that are to be filled in by the parties include the following and shall be determined as provided below:

1.2.1 The identity of the initial Ground Tenant for such Ground Lease, which may, at Developer's election, be the Developer, any Affiliate of Developer (hereinafter defined), any Approved User (hereinafter defined), or any Other Approved Tenant (hereinafter defined). An "Other Approved Tenant" shall mean an entity designated by Developer and approved by the Government, which approval shall not be unreasonably denied, conditioned or delayed. Any of the foregoing (i.e., Developer, Affiliate of Developer, Approved User and Other Approved Tenant) shall sometimes hereinafter be referred to as an "Approved Ground Tenant." For the purposes hereof, the term "Approved User" shall mean an entity designated by Developer that intends to occupy all or substantially all of the Improvements (as defined in **Section 1.2.2**, below) for a use or uses permitted under Paragraph **1** and Paragraph **22** of the form of Ground Lease attached hereto as **Exhibit B**. In the event that the Ground Tenant under any Ground Lease is not the Developer, then Developer shall remain liable for all of the obligations of such Ground Tenant under such Ground Lease, until the date that the Developer's architect determines that the initial Improvements to be constructed on the Lease Premises have been substantially completed (the "Release Date"), provided that the then current Ground Tenant confirms its liability under the Ground Lease or Developer provides other reasonable evidence of such Ground Tenant's assumption of liability under the Ground Lease. In addition, Developer may request that the Government consent to release the Developer earlier from any such liability, which early consent shall be granted solely in the discretion of the Government. On the Release Date or upon the date of Government's earlier consent to release Developer (as provided above), Developer shall be released of any liability or obligations under such Ground Lease. Upon written request from Developer, the Government shall execute a certification confirming such release. Such certification shall be substantially in the form attached hereto as **Exhibit H**.

1.2.2 Preliminary Plans (as defined in Exhibit G hereto) for the initial improvements ("Improvements") to be constructed on the subject Lease Premises, which are to be approved in accordance with the Design Review Process described in **Section 3.1**, below.

1.2.3 Final description of the premises comprising the building site, or building sites, or portion or portions thereof ("Lease Premises") to be demised by the Ground Lease (adjusted pursuant to **Section 2.1**, below), which description shall be based upon an ALTA survey thereof, to be obtained by the Developer at its expense prior to the Designated Closing Date, and which description shall be incorporated into the Ground Lease as "Exhibit A" thereto.

1.2.4 The rent payable under the Ground Lease shall be set forth on "Exhibit B" to the Ground Lease (which amount shall be payable into the Escrow Account to facilitate in-kind consideration, as more particularly set forth in the Ground Lease). The annual rent payable under any Ground Lease will be based on the type and use of the improvements to be constructed on the Lease Premises in accordance with the following.

(1) This subsection 1.2.4(1) shall govern the annual rent payable under a Ground Lease of a Lease Premises on which the approved Improvements constitute

_____ Improvements (hereinafter defined). The term "_____ Improvements shall mean Improvements for _____ Use. The term "_____ shall mean _____) _____ or any other use that is not _____ use. The annual rent payable for the each Lease Year (as defined in the Ground Lease) of the term under any such Ground Lease shall be **specific business terms here**

(2) This subsection 1.2.4(2) shall govern the annual rent payable under a Ground Lease of a Lease Premises on which the Improvements approved constitute a _____ ("Type of Improvements"). The annual rent payable for each Lease Year of the term under any such Ground Lease shall be **specific business terms here.**

1.2.5 The Government agrees to make reasonable modifications to each Ground Lease to accommodate the requirements of each prospective Leasehold Mortgagee (as defined in the Ground Lease), provided that the Government shall never be required to enter into any amendment to the Ground Lease that would (i) subordinate all or any portion of the Government's fee interest in the Lease Premises (as defined in the Ground Lease), (ii) reduce, defer or further subordinate the payment of rent, (iii) require the Government to assume or join in any obligation, monetary or otherwise, which is an obligation of the Developer or the Ground Tenant under the Ground Lease, (iv) extend the term of the Ground Lease, or (v) permit the Developer or the Ground Tenant to construct improvements on the Lease Premises other than those permitted under the Ground Lease. The provisions of this **Section 1.2.5** shall survive each and every Closing hereunder and any expiration or earlier termination of this Agreement.

1.2.6 All other provisions which remain to be completed or exhibits which remain to be provided in order to complete the Ground Lease shall be incorporated into the Ground Lease, so that the document is fully completed and in final form as of the Designated Closing Date for such Ground Lease.

1.2.7 Without limiting any obligation of the Government, in the event that as a result of any act or omission of the Government (including any emergency or lock-down of the Project or surrounding area), access to or use of the Project or any part thereof is materially impaired, then the Government shall use best efforts to provide alternative access to and use of the Project or part thereof affected in a manner reasonably satisfactory to the Developer and/or affected Ground Tenant. In the event access to the Project or any Lease Premises is restricted (or anticipated to be restricted) for _____(_____) or more days, then, in addition to any other right or remedy Developer may have as a result thereof, Developer shall be entitled to arrange for alternative access to the Project or such Lease Premises from **Name of Road** (or from such other road(s) as Developer determines is more practicable), including at the location set forth on **Exhibit F** hereto, and in connection therewith, Developer shall be entitled to construct such service roads, curb cuts and perform other associated work to effect such alternative access and shall construct a security fence segregating the Project or Lease Premises from the Army base and or certain other portions of the **Installation Name** as appropriate. The security fence would be substantially similar to the security fence then existing around the Army base at the **Installation Name**. The cost of the foregoing shall be reimbursed to Developer from the Escrow Account (as an In-Kind Contribution), and if funds in the Escrow Account are insufficient to fully reimburse Developer for such costs, the Government shall pay to Developer the remaining unpaid amount of such costs.

1.3 Agreement to Enter Into Declaration and Easements. The Government shall execute, acknowledge and deliver one or more Declaration of Easements, Covenants, Conditions and Restrictions ("Declaration") in recordable form, for the use and benefit of the Project, the initial Ground Tenant and Lease Premises, and all subsequent Ground Tenants and Lease Premises, in the form attached hereto as **Exhibit D** which shall be recorded among the land records of **Name** County, **State** on or before the first Designated Closing Date. Upon Developer's request, the Government agrees to enter into, from time to time, such amendments and/or modifications of the Declaration as may be necessary or appropriate to serve and/or accommodate the specific requirements of the improvements to be constructed on the Lease Premises under a given Ground Lease and the use and operation of said improvements. From time to time during the term of this Agreement, the Government shall enter into such other easements on the Project and/or the property adjacent or nearby the Project for access to and construction of the Project or any part thereof and to provide and maintain any utilities serving the Project or any part thereof, provided that the Government shall not be responsible for any costs associated therewith, except if agreed to in writing by the Government.

1.4 Right of Entry. The Developer shall have the right, from time to time, to enter upon any portion of the Project Site to perform such due diligence, inspections, tests and verifications as Developer shall reasonably desire, including surveys, borings, tests (including environmental and munitions testing) and other inspections; provided, however, that prior to accessing such area to conduct any physical tests, Developer shall have in place the comprehensive general liability coverage required by the form Ground Lease. Developer shall also have the right to enter upon any part of the Project Site, **Street Name** **providing access** and adjacent areas as necessary to perform from time to time the development and construction of the Infrastructure Improvements, provided, however, that Developer shall provide notice to the Director of Public Works of the times Developer will be entering upon such areas, except for any areas that are part of any Leased Premises, Easement Area (as defined in the Declaration) or Common Areas (as defined in the Declaration); in which case, no such notice shall be required.

1.5 Pre-Payment. The Developer, with consent of the Government, shall have the option and ability, from time to time and at anytime, to pre-pay all or any portion of the rent payable pursuant to any Ground Lease entered into pursuant to this Agreement. The amount of the pre-payment and the timing of the pre-payment shall be mutually agreed upon by Developer and the Government.

1.6 Participation Agreement. Simultaneously with the execution of the Ground Lease, Ground Tenant and the Government shall enter into a participation agreement (the "**Participation Agreement**") prepared by Ground Tenant in a form reasonably satisfactory to the Government and Developer, which Participation Agreement shall include, among other things, the following terms:

(a) In connection with the first assignment of the Ground Lease (other than as security) to an assignee in connection with an "arms length" sale of such Ground Lease (the "First Qualified Sale"), Ground Tenant shall pay to the Government upon the closing of such First Qualified Sale an amount equal to the Government Participation Amount (hereinafter defined) for such Ground Lease;

(b) No Government Participation Amount shall be paid in connection with any financing or refinancing by Ground Tenant or the receipt of any proceeds therefrom, or any exercise of any rights of the lender under the documents evidencing or securing such financing or refinancing (including without limitation, in connection with any foreclosure or conveyance in lieu thereof). The Government Participation Amount shall only be paid in connection with the First Qualified Sale; it being understood that the Government Participation Amount shall not apply to any other conveyance or assignment. The Government's rights in and to the Government Participation Amount and the payment thereof shall be subject and subordinate to the prior payment in full of any liabilities or obligations of Ground Lessee to any Leasehold Mortgagee that may from time to time be or become outstanding, and the Government shall execute such subordination agreement with respect to the Government Participation Amount as any Leasehold Mortgagee may request in connection with any financing or refinancing by Ground Tenant.

(c) The Government Participation Amount with respect to any Ground Lease shall mean [REDACTED] percent ([REDACTED]%) of the amount by which the price paid by the Qualified Ground Lease Purchaser for the purchase and assignment of such Ground Lease (the "**Ground Lease Purchase Price**") exceeds the Total Ground Lease Project Costs (as defined in **Exhibit K** hereto) attributable to such Ground Lease. If the Total Ground Lease Project Costs attributable to any Ground Lease exceeds the Ground Lease Purchase Price for such Ground Lease, then no Government Participation Amount shall be payable with respect to such Ground Lease.

1.7 Escrow Agreement. Simultaneously with the execution of the Ground Lease, Ground Tenant, the Government and Developer shall enter into an Escrow Agreement in the form attached as Exhibit E to the Ground Lease. Except for a security interest in favor of the Government, the Developer shall not voluntarily subject the Escrow Account to any lien or otherwise pledge the Escrow Account to secure any debt. The purpose of the Escrow Agreement is facilitate the receipt by the Government of rent under the Ground Lease in the form of either cash ("**Cash Consideration**") or in-kind consideration ("**In-Kind Consideration**"), the exact form of which In-Kind Consideration shall be determined as set forth in the Escrow Agreement. Any In-Kind Consideration shall be provided by Developer (or an affiliate of Developer, designated by Developer) pursuant to the Escrow Agreement, but paid for from funds in the Escrow Account (hereinafter defined) as provided in the Escrow Agreement. Developer shall have no obligation to provide any In-Kind Consideration not paid for by the Government or from the Escrow Account. The Escrow Account shall be subject to such procedures and controls as are stated in the Escrow Agreement. In no event shall Developer be required to provide In-Kind Consideration with a value (as determined by agreement between the Government and Developer) in excess of the amount of funds in the Escrow Account. Except as otherwise consented to by Developer, the In-Kind Consideration may include the following services to the extent requested in writing from time to time by the Government and approved by Developer (which approval shall not be unreasonably withheld): new construction of facilities within **Name of Installation**, up-grade of existing facilities within **Name of Installation**, repair and maintenance of existing facilities, property management services, engineering services, public relations and community relations services, master planning services, landscaping services, trash and snow removal services, rent for space occupied within the Lease Premises, food services, perimeter fence upgrades, and security upgrades (These are just samples and can vary by installation). All such services shall be provided within the confines of the Project and the **Name of Installation**

and shall be provided by or on behalf of Developer or one of their affiliates designated by Developer and paid for from the funds in the Escrow Account.

ARTICLE 2 Premises

2.1 Description. The perimeter boundaries of the Project Site and all of the property within such boundaries (including the currently contemplated building sites) are shown on **Exhibit C** to this Agreement. It is agreed that, at the request of the Developer, and in determining the final description of the Lease Premise for each Ground Lease pursuant to **Section 1.2.3** the boundaries of each building site may be contracted or expanded, and the building sites may be combined, in whole or in part, at Developer's discretion.

2.2 Condition. Except as expressly provided otherwise herein, the Lease Premises shall be delivered by the Government to the Developer pursuant to the Ground Lease demising such Lease Premises on the Designated Closing Date for such Ground Lease in its then "as is" condition as of the date of the Notice of Closing, including, without limitation, legal title, subsurface conditions, existing structures, except that the Government shall be required to remove and/or remediate prior to the Designated Closing Date any Excessive Hazardous Substances (as hereinafter defined) that may exist or be present at the Lease Premises (and not existing as the result of any act or omission of the Developer or any employee, agent or representative of Developer), such remediation to be made in compliance with all Applicable Laws (including without limitation, all environmental laws and regulations) and consistent with Developer's and Ground Tenant's intended use of the Lease Premises. During the term of this Agreement the Developer shall have the right from time to time, to access any area in the Project Site to perform tests and inspections as more particularly provided in Section 1.4 hereof. Except as expressly set forth herein, the Government has made no representations or warranties of any kind, express or implied, in fact or by law, with respect to such condition or the suitability of the Project Site or any particular building site for the uses contemplated herein. The Government shall have no obligation hereunder to do any work on or with respect to the Project Site or any portion thereof, except as expressly provided herein, including without limitation, the obligations of the Government to (i) maintain and deliver to Developer or the Ground Tenant, as the case may be, the Project Site and each Lease Premises free of tenants, (ii) cure any New Title Matter pursuant to Section 2.4.2, below, and (iii) deliver the Leased Premises in compliance with this Section 2.2 and Section 2.3 hereof. Notwithstanding the forgoing, nothing herein shall limit the requirements of the Government provided by any Applicable Laws or in any agreement to which the Government is a party, including without limitation, any Ground Lease, Declaration, Support Agreement, or utility contract. During the term of this Agreement, the Government shall not construct, nor authorize the construction of, any structures on the Project Site, nor shall the Government take or authorize any other activities on the Project Site that would alter its condition in a manner that would materially interfere with the Developer's and/or Ground Tenant's ability to construct the Project in accordance with this Agreement or increase the costs of the Project. During the term of this Agreement and at Developer's request from time to time, the Government shall identify the location of any known Hazardous Substances and shall provide to the Developer any and all environmental and other reports relating to condition of the Project or any part thereof.

2.3 Remediation of Existing Hazardous Substances. At the time that the Government is required to deliver any Lease Premises to the Ground Tenant pursuant to the Ground Lease demising such Lease Premises, the Government shall deliver such Lease Premises in a safe condition (i.e., a condition protective of human health and the environment), in compliance with and as required by any and all Applicable Laws and free of any Excessive Hazardous Substances. The term "Excessive Hazardous Substances" shall mean any Hazardous Substances (as such term is defined in the form of Ground Lease attached hereto as Exhibit B) in violation of any Applicable Laws or in quantities or concentration that would give rise to remediation liability or responsibility under any Applicable Laws (based upon Developer's and Ground Tenant's intended construction activities on and use of the applicable Leased Premises or such other property where such Hazardous Substances are located), including without limitation the requirements of the Environmental Protection Agency or **Name of State** Department of Environment. In addition, at the time that Developer commences any Infrastructure Improvements on the Project Site, the Government shall cause the property on which such improvements will be constructed to be in a safe condition (i.e., a condition protective of human health and the environment), in compliance with all Applicable Laws and free of any Excessive Hazardous Substances (not caused by Developer or anyone claiming by or through Developer). The Government shall not hereafter introduce any Hazardous Substances to the Lease Premises or the Project. If there are any Hazardous Substances (that qualify as Excessive Hazardous Substances) on the Project Site or any portion thereof as of a Designated Closing Date ("Existing Hazardous Substances") or are introduced thereafter by the Government, the Government shall promptly remediate such Hazardous Substances in accordance with and as required by any and all Applicable Laws and Developer's and Ground Tenant's intended use of any Lease Premises and the Project, provided, however, that if any Existing Hazardous Substances (that qualify as Excessive Hazardous Substances) are discovered on a proposed Lease Premises prior to the applicable Designated Closing Date, (i) the Government shall have the right to extend any then pending Designated Closing Date for a reasonable period of time, not to exceed one hundred twenty (120) days, in order to comply with the provisions of this **Section 2.3**, and (ii) if the Existing Hazardous Substances are contained and could not affect any other property in the Project Site and the reasonable estimate of the cost to remediate the Existing Hazardous Substances renders such remediation impracticable in light of the rent and economic benefit the Government would receive from the proposed Lease Premises on which the Existing Hazardous Substances is found, then the Government shall have the option (the "Refusal Option") to refuse to remediate such Existing Hazardous Substances, exercisable by providing written notice thereof to Developer on the earlier of (1) the day that is thirty (30) days after the Government is notified of such Existing Hazardous Substances or (2) the day immediately prior the Designated Closing Date. If the Government exercises its Refusal Option with respect to any such property, then Developer shall have the option to lease the Lease Premises in accordance herewith and take responsibility for any remediation of such identified Existing Hazardous Substances that may be required by any Applicable Law (and Developer shall have no right to seek reimbursement from the Government for any such remediation or for damages suffered by Developer in connection with such identified Existing Hazardous Substances, other than relating to any third party claims that relate to the period prior to Developer leasing such Lease Premises) or to not lease the Lease Premises (or such other property not yet identified as Lease Premises) on which such Existing Hazardous Substances has been identified. In the event Developer chooses to not lease such property, the Government shall not be entitled to convey or lease such property to anyone else, unless and until the Government offers such property to Developer for lease in accordance with the terms of this Agreement; and, unless and until leased to Developer, the Government shall, at the Governments

sole cost, take such action and perform such work including fencing, landscaping and/or maintenance to such property as Developer shall reasonably request in order that such property does not adversely affect (including, physically or aesthetically) any other property in the Project. The provisions of this **Section 2.3** shall survive each and every Closing hereunder and any expiration or earlier termination of this Agreement. Nothing contained herein (including the foregoing remedies set forth in this Section 2.2) shall limit any other rights or remedies Developer may have against the Government pursuant to any Applicable Laws or this Agreement as a result of the existence of any Hazardous Substances on or introduced (other than by Developer) to any property within the Project, including any right Developer may have to make a claim for damages resulting therefrom. The term "**Applicable Law**" shall mean any and all applicable Federal, state, county and municipal laws, ordinances, regulations, orders and requirements. The Government shall not conduct any arms or munitions testing on or at the Project Site. Without limiting any obligation of the Government or any right or remedy of Developer hereunder, in the event that it is necessary to remove any UXOs or MECs from, or perform a "sweep" for UXOs or MECs with respect to, any portion of the Project in order to comply with any Applicable Laws, any requirement of its insurance carrier or prudent construction practice, then the Government shall promptly undertake such work to comply therewith. If the Government fails to promptly perform such work, Developer shall be entitled to perform such work consistent with Applicable Law and seek reimbursement from the Government. Without limiting any obligation of the Government or any right or remedy of any Ground Tenant provided in any Ground Lease, each Ground Tenant shall be a third party beneficiary of the Government's obligations under this Section 2.3 to the extent such obligation relates to or affects in any manner the Infrastructure Improvements.

2.4 Title. The Developer acknowledges that it has obtained a commitment No. _____ from _____ Company (the "Title Company") for one or more title insurance policies for the Project and appurtenant rights having an Effective Date of _____ and attached hereto as **Exhibit E** (the "Commitment"). The Government shall provide the Title Company with evidence reasonably satisfactory to the Title Company in order to satisfy any requirements set forth therein in respect of mechanics liens and unrecorded leases on Schedule **■**, Section **■** of the Commitment. Except as specifically set forth in the preceding sentence, the Developer is solely responsible for curing any title problems shown in said Commitment necessary for the financing and development of the Project. Notwithstanding the foregoing, the Government agrees to cooperate with Developer in connection with the curing of any such title problems and agrees that it will not voluntarily, without the prior written consent of the Developer, convey, encumber, lease or grant any interest or right in or with respect to the Project Site. The Government agrees to execute and deliver on each Designated Closing Date such customary affidavits with respect to parties in possession and mechanics liens and evidence of authority as may be requested by the Title Company.

2.4.1 Change of Conditions - Title. The Government agrees not to grant, convey or permit any lien, encumbrance or other interest in the Project Site during the term of this Agreement. If, between the date of the Commitment and each Designated Closing Date, an updated title report shows any new title matter or matters that did not exist as of the date of the Commitment ("New Title Matter"), then the Developer shall have the right to give the Government written notice of any such New Title Matter ("Title Defect Notice") and in such instance, the parties shall have the rights and obligations as to such New Title Matter as stated in **Section 2.4.2** below. If the Developer does not give notice of any such New Title Matter to the

Government on or before the Designated Closing Date, the Developer shall be conclusively presumed to have waived such New Title Matter and to have agreed to accept title subject to such New Title Matter, and the closing shall occur without any credit or offset against rent.

2.4.2 Curing and Removal of Intervening Title Matters. If the Developer gives a Title Defect Notice to the Government in accordance with the provisions of **Section 2.4.1**, above, then with respect to any New Title Matter listed in the Title Defect Notice, the Government shall cause such New Title Objection to be removed or released of record before the Designated Closing Date, provided that the Government shall have the right to extend the Designated Closing Date for a reasonable period of time (not to exceed 120 days) in order to comply with the provisions of this **Section 2.4.2**

2.4.3 Water and Sewer Capacity. At anytime that Developer contemplates the development of a portion of the Project Site as a Lease Premises, Developer may request that the Government execute, in a form reasonably acceptable to Developer, a reservation of capacity for the water and sewer to be provided by the Government, in an amount sufficient to service the Lease Premises and the improvements Developer then contemplates for the Lease Premises.

ARTICLE 3 Improvements

3.1 Design Review Process. The Government acknowledges receipt of and hereby approves the development concept plan and related conceptual plans and comments attached hereto as **Exhibit C** (collectively, the "Development Concept Plan") for the Project. The Developer acknowledge and agree that the Development Concept Plan is conceptual and preliminary only and that the actual development of the Project may be materially different from that depicted in the Development Concept Plan depending on market demand and other factors. In any event, the Preliminary Plans prepared or developed by or on behalf of the Developer in connection with the Developer's design of the Improvements for any Lease Premises and the plans and specification for the Infrastructure Improvements shall be subject to the review and approval of the Government pursuant to the design review process described in **Exhibit G** hereto (the "Design Review Process"). The Government and Developer acknowledge that the portion of the **Name of Installation** Design Guide (dated ____) that relates to Improvements on the Project Site is attached hereto as **Exhibit J** (the "Project Site Design Guidelines"). Such Project Site Design Guidelines shall be subject to change from time to time as hereinafter provided. If Developer determines that a change in the Project Site Design Guidelines would result in a more efficient, orderly, convenient or desirable use of the land comprising the Project Site, then Developer may request that the Government approve in writing an amendment to the Project Site Design Guidelines. The Government's approval of such amendment shall not be unreasonably withheld, conditioned or delayed, unless such amendment would materially adversely affect the general character of the Project or the health, security, safety and general welfare of the users of the Project or the **Name of Installation** Army base. If the Developer desires relief from the requirements of any of the Project Site Design Guidelines with respect to the Improvements for a particular Lease Premises or proposed Lease Premises, then Developer can request that the Government approve a variance from compliance with such requirement, which approval shall not be unreasonably withheld conditioned or delayed, unless such variance would materially adversely affect the security, safety, character or use of any adjacent Lease Premises. If the Developer requests approval of particular Improvements and any component thereof is not in

conformity with the then effective Project Site Design Guidelines or any variance therefrom, then the Government shall be entitled to object to inclusion of such component in the design of the Improvements, and require, as a condition to giving its consent, that Developer modify of the design of such component to be in conformity with the Project Site Design Guidelines. Any approvals for amendment to or variance from the Project Site Design Guidelines by the Government shall be made by the Director of Public Works, who shall have the authority to grant such approvals.

3.2 Improvements. The Improvements to be constructed on any Lease Premises shall be constructed in accordance with the International Building Code (or successor code) then in effect and adopted by **Name** County, **State**. The Improvements to be constructed on any Lease Premises shall be as more particularly described in the Preliminary Plans and shall include, without limiting the generality of the foregoing and subject to changes thereto requested by governmental agencies as a condition to issuing, re-issuing or modifying any Approvals (as defined below) for the construction of the Improvements, the following:

3.2.1 The demolition of any existing improvements on the Lease Premises and the removal and proper disposal of all debris resulting therefrom;

3.2.2 The design of the Improvements to be constructed on the Lease Premises;
and

3.2.3 A description of any related improvements and site work on the Lease Premises, including any Infrastructure Improvements to be located on the Lease Premises.

3.3 Infrastructure Improvements. In order to facilitate and permit the construction and subsequent use of the Improvements to be developed pursuant to a Ground Lease, Developer shall develop and construct such portion or portions of the Infrastructure Improvements as are necessary therefor in accordance with the plans for such Infrastructure Improvements approved by the Government pursuant to the Design Review Process set forth in **Exhibit G**. Accordingly, Developer agrees to construct such portion or portions of the Infrastructure Improvements as may be necessary to support and service the Improvements to be constructed on the Lease Premise demised by a Ground Lease on or before the Designated Closing Date for such Ground Lease or, alternatively, will establish to the reasonable satisfaction of the Government that such Infrastructure Improvements will be completed no later than the completion of the Improvements to be constructed on the Lease Premises. Upon Developer's completion of the Infrastructure Improvements or any portion or portions thereof, at Developer's option, the Government will accept same and thereafter be responsible for the maintenance and upkeep thereof pursuant to any Declaration and any Inter-service Support Agreement entered into by the Government; provided, however, that Developer shall have the option, from time to time, to terminate any such agreements and transfer responsibility to Developer or other designees as provided in Section 3.4 below.

3.4 Maintenance of Infrastructure Improvements. Upon Developer's completion of any portion or portions of the Infrastructure Improvements, the cost of maintaining, repairing and replacing same will be allocated between each Ground Tenant benefited thereby, all in accordance with the terms and conditions of the Declaration; and Government shall not be responsible for such costs. Upon completion of the Infrastructure Improvements, Developer shall

have the right to require that the Government be responsible for maintaining, repairing and replacing same in accordance with the terms and conditions of the Declaration and/or a Support Agreement; and the Government shall be reimbursed for such costs pursuant to the contract to provide such services. At anytime prior thereto or thereafter, Developer shall be entitled to transfer such responsibility to Developer or the Maintaining Party (as defined in the Declaration). In the event that any Infrastructure Improvements require capital improvements, (i) in the event that the Government is maintaining the Infrastructure Improvements and desires to make such capital improvements, the Government shall obtain the Developer's prior written approval thereof and of the cost thereof (which approval shall not be unreasonably withheld, conditioned or delayed, provided such improvements are necessary to maintain the Infrastructure Improvements in good order and repair), and (ii) in the event that the Government is maintaining the Infrastructure Improvements and Developer desires to make such capital improvements, the Government shall undertake such improvements with due diligence and in a good and workmanlike manner. The Developer shall be responsible for the cost of any such capital improvements to the Infrastructure Improvements. Developer shall be entitled to transfer any responsibilities it has hereunder with respect to the Infrastructure Improvements, including without limitation, any responsibility for costs of maintenance and capital improvements thereto, to the Maintaining Party under the Declaration.

3.5 Access Improvements. **Include this paragraph if applicable.** The scope, timing, and cost of such Initial Additional Access Improvements shall be determined in the same manner as the Additional Access Improvements as provided in Section 3.5.1, below.

3.5.1 Additional Access Improvements. **Include this paragraph if applicable** The scope, timing, and cost of each Additional Access Improvements shall be determined in the following manner:

- a. Prior to execution of any Ground Lease or Ground Leases for the Initial Square Footage and for each Additional Square Footage, Developer shall deliver to the Government a Traffic Study and a Transportation Improvement Agreement and shall request in writing approval thereof by the Government.
- b. Each Traffic Study shall be prepared by a mutually acceptable traffic and transportation consulting firm. The initial Traffic Study shall measure the fair share impact, if any, of the Initial Square Footage on the [REDACTED] intersection and each subsequent Traffic Study shall measure the fair share impact, if any, of each Additional Square Footage on (i) the [REDACTED] main gate queuing area, and (ii) the [REDACTED] intersection.
- c. The initial Traffic Study will recommend Initial Additional Access Improvements, if any, necessary to mitigate the impact, if any, of the Initial Square Footage and will contain (i) a specific scope for the Initial Additional Access Improvements, sufficient for Developer to prepare a cost estimate, and (ii) a schedule for the implementation of the Initial Additional Access Improvements concurrent with the build out of the Initial Square Footage. Each subsequent Traffic Study will recommend Additional Access Improvements, if any, necessary to mitigate the impact, if any, of the Additional Square Footage and will contain (i) a specific scope for the Additional Access Improvements, sufficient for Developer

to prepare a cost estimate, and (ii) a schedule for the implementation of the Additional Access Improvements concurrent with the build out of the Additional Square Footage.

d. Each Transportation Improvement Agreement (**necessary if the initial square footage constructed by developer impacts transportation**) will be prepared by Developer and shall incorporate the specific scope and schedule of the recommended improvements (i.e., the Initial Additional Access Improvements or the Additional Access Improvements, as the case may be). The Transportation Improvement Agreement will be executed by the Developer and the Government and will be an acknowledgement of the Government's approval of the Additional Square Footage (or Initial Square Footage, as the case may be) and the Additional Access Improvements (or the Initial Additional Access Improvements, as the case may be).

e. Each Traffic Study **and each Transportation Improvement Agreement** shall be mutually approved by the Government and the Developer, and the Government shall not unreasonably withhold or condition its approval of any Traffic Study **or Transportation Improvement Agreement**. The process and timing for review and approval of the Traffic Study and **Transportation Improvement Agreement** would be similar to the Design Review Process as outlined in **Exhibit G**.

3.6 Permitting the Project. Subject to the terms and conditions of this Agreement, the Developer, at its sole cost and expense, shall obtain all environmental and other permits, licenses and approvals necessary to enable the construction and use of the Improvements to be constructed on the Lease Premises and the portion or portions of the Infrastructure Improvements to be completed in conjunction therewith (collectively, the "Approvals"). At Developer's request, the Government shall assign to Developer (or its designee), to the extent assignable, any environmental and other permits, licenses and approvals the Government may have that relate to construction, development and/or use of the Project and Project Site. The Government shall cooperate with the Developer in connection with the Developer's efforts to obtain the Approvals (including reasonable consideration of changes in the design of the Improvements and/or Infrastructure Improvements requested by other governmental agencies), shall execute such documents and instruments (including easements) as Developer shall reasonably request in connection therewith and shall join in any such proceeding where the provisions of any law, rule or regulation at the time in effect require that such proceedings be brought by or in the name of the Government, provided that the Government shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings. Nothing herein, however, shall prohibit the Developer from taking such lawful actions as it may deem necessary in seeking Approvals consistent with the design of the Improvements and/or Infrastructure Improvements (or defending the same in any appeal), and the Government shall not appear in opposition to the Developer so long as the Approvals are consistent with the design of the Improvements or Infrastructure Improvements, as the case may be, approved in accordance with this Agreement.

3.7 Support Agreement; Utility Contracts. At Developer's request from time to time, the Government shall enter into a Support Agreements with the Contracting Party (as defined in the form Ground Lease attached hereto) to provide for the Project (**type of services**_____)

services and such other services (including without limitation, road maintenance) requested by the Contracting Party that are generally provided by the Government at **Installation Name** (including those services set forth on **Exhibit I** hereto), all as more particularly provided in the Declaration and the form of Ground Lease attached hereto. The charge for police and fire services, if any, shall not exceed the Project's proportionate share of the costs incurred by the Government to provide such police and fire services to the area comprising the **Installation Name**, which proportionate share shall be the ratio that the square feet of the improvements on all Lease Premises in the Project bears to the square feet of all improvements in the area comprising the **Installation Name**. Upon written request by Developer from time to time, the Government shall provide to Developer in writing a summary of the square feet of the improvements in the area comprising the **Installation Name**. At Developer's request from time to time, the Government shall also enter into a utility contract ("Utility Contract") on commercially reasonable terms with the Contracting Party to provide for the Project any water, sewer, and drainage services required, all as more particularly provided in the Declaration and form of Ground Lease attached hereto.

3.8 Development Process.

3.8.1 The Government and Developer acknowledge and agree that the Project may be developed in phases such that the Developer may enter into a Ground Lease for each building site at a time and in such order as the Developer may determine based on the market demand for the Improvements planned to be developed on such building site. Prior to the date hereof, the Developer has provided to the Government its Business Plan for the Project ("Business Plan"), including a detailed marketing plan ("Marketing Plan") for the Project, which plan is subject to change for time to time.

3.8.2 Once the Developer determines to proceed with the development of specific Improvements, the Developer shall, from time to time, at reasonable intervals and as circumstances warrant, keep the Government advised of the status of the Developer's progress and schedule for such development, without limiting the generality of the foregoing, the status of development of materials for the Design Review Process, securing of financing, arrangements for construction, and obtaining all of the Approvals. All submissions to be made by the Developer to the Government under this Agreement for approval of the Improvements or Infrastructure Improvements shall be made sufficiently in advance of the applicable Designated Closing Date to allow the Government a reasonable period to review and approve, disapprove or comment thereon to facilitate an orderly closing. In this connection, the Developer agrees to use diligent efforts to (i) prepare and obtain the approval of the Government to all materials to be submitted pursuant to the Design Review Process, (ii) secure loans and/or equity investment for the construction and permanent financing in respect of the Improvements to be developed pursuant to a Ground Lease, and (iii) obtain all necessary Approvals to construct the Improvements to be constructed pursuant to a Ground Lease.

3.9 Status of Project. The Government shall have the right to review any work being performed in connection with the Project by the Developer or its employees, agents and contractors to the extent reasonably required by the Government to insure that such work is being performed in a manner consistent with the rights and obligations of the Developer hereunder. The Government shall cooperate, and shall not by any act or omission cause an unreasonable delay, in any material respect, in the development of the Project or the construction of any improvements on or serving the Project Site or otherwise interfere, in any material respect, with

the Developer and its employees, agents and contractors in their carrying out the development of the Project or any portion thereof.

3.10 Termination of Project. Notwithstanding any other provision of this Agreement, if Developer, in Developer's sole and absolute discretion, determines that the implementation of the Business Plan is not feasible with regard to the Project, the Developer may, in respect of any portion of the Project Site not then demised pursuant to a Ground Lease, and upon sixty (60) days prior written notice to the Government, terminate this Agreement without penalty or recourse of any kind. Prior to exercising this right, Developer agrees to enter into good faith negotiations with the Government concerning revisions to the Business Plan. Following such termination, Developer and the Government shall have no further rights or obligations under this Agreement accruing after such termination, subject to any obligations of the parties under any Ground Lease entered into before said termination and subject to any obligations hereunder that expressly survive termination of this Agreement.

ARTICLE 4 Closing

4.1 Designated Closing Dates. The execution and delivery of each Ground Lease (each a "Closing") shall take place on the date (each a "Designated Closing Date") designated by Developer in a notice ("Notice of Closing") identifying the Ground Lease to be entered into on such date and served upon the Government no less than thirty (30) days prior to such date. Developer may withdraw its Notice of Closing by providing written notice of such withdrawal to the Government at any time prior to Closing. If a Closing in respect of any given Ground Lease and the Lease Premises to be demised thereby does not take place on the Designated Closing Date for which a Notice of Closing had been given for any reason, including a failure to satisfy any condition to such Closing or Developer's withdrawal of its Notice of Closing, Developer shall not be precluded from providing one or more subsequent Notices of Closing in respect of said Ground Lease or Lease Premises, or any portion or portions thereof; it being agreed that Developer may terminate, postpone, re-schedule and reconstitute the Lease Premises as provided herein as many times as Developer determines is necessary in order to facilitate the development of the Project; provided, however, if Developer withdraws its notice for any reason other than a failure of a condition to Developer's obligation to close, then Developer must provide a new Notice of Closing with respect to the Lease Premises (or with respect to a portion of the building site that contains all or a part of such Lease Premises) identified in the Notice of Closing within one hundred eighty (180) days after such withdraw of its notice or lose the right to lease such proposed Lease Premises.

4.2 Place and Time of Closing. Each Closing contemplated hereunder shall take place at the offices of the Title Company at 11:00 a.m. on the Designated Closing Date, or at such other place as may be mutually agreed upon.

4.3 Conditions Precedent to Government's Obligations. It shall be a condition precedent to the Government's obligation to execute a Ground Lease on the Designated Closing Date that:

4.3.1 No Default. No Event of Default by Developer shall then exist and remain uncured;

4.3.2 Representations Remain True. Each and every of the representations and warranties of Developer made herein remain true and correct in all material respects.

4.3.3 Preliminary Plans. The Preliminary Plans for the Improvements to be constructed on the Lease Premises have been submitted and approved pursuant to the Design Review Process in accordance with **Section 3.1** hereof;

4.3.4 Infrastructure Improvements. The plans for any Infrastructure Improvements necessary to provide access to the Lease Premises shall have been submitted and approved pursuant to the Design Review Process;

4.3.5 Approvals. The Developer shall have obtained and submitted to the Government copies of all required Approvals for the commencement of construction of the subject Improvements and any applicable Infrastructure Improvements;

4.3.6 Insurance. The Developer shall have submitted to the Government policies of insurance with respect to all insurance coverage required by the terms of the Ground Lease to be in existence at the commencement of the term thereof, such policies to comply with the requirements of the Ground Lease;

4.3.7 Additional Documents. Any other documents required to be executed or delivered by the Developer or the Ground Tenant in connection with the execution of the Ground Lease shall have been fully executed and delivered.

4.4 Conditions Precedent to the Developer's Obligations. Without limiting any rights of Developer pursuant to Section 4.1 hereof, it shall be a condition precedent to the Developer's obligation to execute the Ground Lease, or cause the Ground Tenant to execute the Ground Lease, on the Designated Closing Date that:

4.4.1 Title. Title to the Lease Premises shall be in the condition required by **Section 2.3** hereof;

4.4.2 No Default. No Event of Default by the Government shall then exist and remain uncured;

4.4.3 Representations Remain True. Each and every of the representations and warranties of the Government made herein remain true and correct in all material respects.;

4.4.4 Preliminary Plans. The Government shall have approved the Preliminary Plans for the Improvements to be constructed on the Lease Premises and the plans for any necessary Infrastructure Improvements pursuant to the Design Review Process in accordance with **Section 3.1** hereof, which approval shall not be unreasonably withheld conditioned or delayed;

4.4.5 Approvals. The Developer shall have obtained all required Approvals for the construction of the subject Improvements;

4.4.6 Memorandum of Lease. The Government shall have executed a Memorandum of Ground Lease with respect to the Ground Lease in form for recording among the land records of **Name County, State**;

4.4.7 Additional Documents. Any other documents required to be executed or delivered by the Government in connection with the execution of the Ground Lease shall have been fully executed and delivered;

4.4.8 Condition. The Lease Premises shall be free of tenants, the Government shall have cured any New Title Matters if required under **Section 2.4.2**, above, and any Hazardous Substances affecting the Lease Premises shall have been remediated by the Government pursuant to **Section 2.3**, above, all to the reasonable satisfaction of Developer; and

4.4.9 Declaration. The Declaration and any amendments or modifications thereof shall have been executed and delivered by the Government as provided in **Section 1.3**, above.

4.5 Waiver of Conditions.

4.5.1 In the event that any condition set forth in **Section 4.3** hereof has not been fulfilled on or before the Designated Closing Date, the Government, in its sole discretion, may elect to waive such condition. The Government shall have no obligation to waive any such condition, it being understood that the preceding sentence is solely for the benefit of the Government.

4.5.2 In the event that any condition set forth in **Section 4.4** hereof has not been fulfilled on or before the Designated Closing Date, the Developer, in its sole discretion, may elect to waive such condition. The Developer shall have no obligation to waive any such condition, it being understood that the preceding sentence is solely for the benefit of the Developer.

4.6 Pre-Approval of Subtenants. At or prior to any Closing, Developer may request that a given subtenant or subtenants for the Lease Premises be approved by the Government in advance of Closing. The Government agrees to provide such pre-approval(s) in writing prior to Closing in respect of any such subtenant or subtenants that satisfy the applicable requirements of the Ground Lease and for any other such subtenant or subtenants that the Government may approve, such approval not to be arbitrarily or capriciously denied, conditioned or delayed.

ARTICLE 5
Restrictions On Assignment

5.1 Indirect Transfers. The Developer shall not directly or indirectly transfer (by assignment or otherwise) all or any of its interests under this Agreement without the prior written consent of the Government, which consent shall not be unreasonably denied, conditioned or delayed. During the term hereof, Developer shall not be released of its obligation unless and until Developer has transferred its interests under this Agreement and the Government has consented thereto; at which time, Developer shall be released from any of its obligations or liability hereunder accruing thereafter.

5.2 Transfers to Affiliates. Notwithstanding anything to the contrary contained in **Section 5.1**, above, the Government's prior consent will not be required with respect to transfers by the Developer to any Affiliate of Developer. For purposes hereof, the term "Affiliate of Developer" shall mean any entity or entities that either controls, is controlled by, or is under

common control with, the Developer, **name specific entity/trust here if known**; and where "control" and words of like import means having a fifty percent (50%) ownership interest, directly or indirectly, in, or having the right, by contract or otherwise, to direct the management or determine the policies of such entity. Nevertheless, the Developer will have to give written notice to the Government prior to any such transfer.

5.3 Attempted Transfer Violating Article 5. Any attempted assignment or transfer in violation of this Article 5 shall be void.

5.4 Initial Parties to the Ground Lease. Notwithstanding anything to the contrary in this Article 5 above, the initial parties to the Ground Lease shall be the Government and the Developer or another Approved Ground Tenant.

ARTICLE 6 Representations and Warranties

6.1 Government's Representations. The Government represents to Developer that:

6.1.1 No person or entity, other than Developer pursuant to this Agreement, has any right or option to purchase or lease all or any portion of the Project Site or to negotiate for the purchase or lease of the Project Site.

6.1.2 The Government, acting by and through the Secretary has the authority to enter into this Agreement and all agreements, instruments and documents to be executed and delivered by or on behalf of the Government pursuant to this Agreement and to perform its obligations thereunder. Upon request from the Developer from time to time, the Government shall provide to the Developer reasonable evidence of the forgoing authority, including without limitation such legal opinion to Developer (or its designee) from the Department of Army Office of the General Counsel regarding such authority as Developer shall reasonably request.

6.1.3 This Agreement is, and all agreements, instruments and documents to be executed and delivered by or on behalf of the Government pursuant to this Agreement are, shall be, valid and legally binding upon the Government and enforceable against the Government in accordance with their respective terms. The execution, delivery and performance of this Agreement does not, and the consummation of the transactions contemplated hereby will not, violate any Applicable Laws, agreement, instrument, order, judgment or decree to which either the Government is a party or by which it is bound.

6.1.4 To the best of the Government's knowledge, there is no claim, action, litigation, arbitration or other proceeding pending or threatened against the Government that relates to the Project Site or the transactions contemplated hereby. If the Government receives notice of any such claim, litigation or proceeding, the Government shall promptly notify Developer of the same in writing.

6.1.5 The Government has not, and, to the best of the Government's knowledge, no other person or entity has, generated, stored, manufactured, processed, treated, spilled, released or disposed of any Hazardous Materials on or about the Project Site and any other portions of the **Name Of Installation** on which the Infrastructure Improvements **or Access**

Improvements are to be installed, or transported Hazardous Materials to or from the aforesaid premises.

6.2 Developer Representations. Developer represents and warrants to the Government that:

6.2.1 Developer is a duly organized, validly existing **State and entity structure (LLC, S C, etc)** company, with full power and authority to enter into this Agreement and all agreements, instruments and documents to be executed and delivered by or on behalf of Developer pursuant to this Agreement. The party or parties executing this Agreement on behalf of Developer are fully authorized to enter into this Agreement, and each and every agreement, instrument and document to be executed and delivered by Developer pursuant to this Agreement, on behalf of Developer and bind Developer to carry out and perform its obligations thereunder.

6.2.2 This Agreement is, and all agreements, instruments and documents to be executed and delivered by or on behalf of Developer pursuant to this Agreement are, and shall be, valid and legally binding upon Developer and enforceable against Developer in accordance with their respective terms. The execution, delivery and performance of this Agreement does not, and the consummation of the transactions contemplated hereby will not, violate any Applicable Laws, agreement, instrument, order, judgment or decree to which either Developer is a party or by which it is bound.

6.2.3 Developer (i) is not in receivership or dissolution, (ii) has not made an assignment for the benefit of creditors or admitted in writing its inability to pay its debts as they mature, (iii) has not been adjudicated a bankrupt or filed a petition in voluntary bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors under the Federal bankruptcy law or any other similar law or statute of the United States or any jurisdiction and no such petition has been filed against Developer, or (iv) to the best of its knowledge, none of the foregoing are pending or threatened.

6.2.4 There is no claim, action, litigation, arbitration or other proceeding pending or threatened against Developer that relates to the Project Site or the transactions contemplated hereby. If Developer receives notice of any such claim, litigation or proceeding, Developer shall promptly notify the Government of the same in writing.

ARTICLE 7

Default and Termination

7.1 Default by the Developer. Any one or more of the following events shall constitute an “Event of Default” by the Developer:

7.1.1 If the Developer fails to observe or perform any material covenant, condition, agreement or obligation hereunder, and fails to cure, correct or remedy such default within ninety (90) days after the receipt of written notice thereof from the Government, unless such failure cannot with due diligence be cured within a period of ninety (90) days, in which case such failure shall not be deemed to be an Event of Default if the Developer proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof; or

7.1.2 Except as otherwise provided by any Applicable Laws, if the Developer shall be judicially declared bankrupt or insolvent according to law or if any assignment shall be

made of the property of the Developer for the benefit of creditors, or if a receiver, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of the Developer's property by a court of competent jurisdiction, or if a petition shall be filed for the reorganization of the Developer under any provisions of law now or hereafter enacted, and such proceeding is not dismissed within ninety (90) days after it is begun, or if the Developer shall file a petition for such reorganization, or for arrangements under any provisions of such laws providing a plan for a debtor to settle, satisfy or extend the time for the payment of debts.

7.2 Default by the Government. An "Event of Default" by the Government shall occur if the Government fails to observe or perform any material covenant, condition, agreement or obligation hereunder, and fails to cure, correct or remedy such default within ninety (90) days after the receipt of written notice thereof from the Developer, unless such failure cannot with due diligence be cured within a period of ninety (90) days, in which case such failure shall not be deemed to be an Event of Default if the Government proceeds with due diligence and in a reasonable manner to cure the failure and diligently completes the curing thereof.

7.3 Remedies. In the event of the occurrence of an Event of Default by a party hereunder, the other party shall have the right to pursue any remedy available at law or in equity. In the event that the Government fails to perform any obligation it may have hereunder or under any Ground Lease, Developer shall be entitled, after providing the Government written notice thereof and a reasonable period of time thereafter to perform, to perform such obligation. Upon demand from the Developer, the Government shall reimburse the Developer for any costs incurred by Developer in connection with such performance.

ARTICLE 8 Miscellaneous

8.1 Applicable Law; Waiver; Interpretation; Attorneys Fees. This Agreement shall be governed by and construed in accordance with the laws of the United States (including without limitation the Contracts Disputes Act, 41 USC §601 et seq.). Claims made in connection with this Agreement may only be made and prosecuted in courts of competent jurisdiction in the State of **Name of State**. The titles of the Articles and Sections contained herein are for convenience only and shall not be considered in construing this Agreement. The recitals at the beginning of this Agreement are incorporated herein. If the Government or Developer brings an action to enforce the terms hereof or declare rights hereunder, to the extent permitted by Applicable Laws, the prevailing party in any such action, or appeal thereon, shall be entitled to its reasonable attorneys' fees and court costs to be paid by the losing party as fixed by the court in the same or separate suit, and whether or not such action is pursued to decision or judgment.

8.2 No Waiver. No assent, express or implied, by either party to any breach of or default in any term, covenant or condition herein contained shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term, covenant or condition hereof.

8.3 Notices. All notices, demands, submissions, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof shall be in writing and shall be deemed to have been properly given if delivered by hand or sent by registered or certified United States mail, postage prepaid, return receipt requested, and:

If directed to the Government addressed to:

Chief, Real Estate Division
Attn: CENAB-RE
10 S. Howard Street
Room 7600
Baltimore, Maryland 21201

With copies to:

Garrison Commander
Installation Name
Installation Address
Attention:

If directed to the Developer addressed to:

Developer Name
Developer Address
Attention:

With a copy to:

Name
Address
Attention:

or to such other addresses as may from time to time be specified in writing by any party hereto. Unless otherwise specified in writing, each party shall direct all sums payable to another party to said party's address for notice purposes.

8.4 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

8.5 Entire Agreement; Amendment. This Agreement and the exhibits attached hereto include the entire agreement of the parties with respect to the Project. No change, amendment or addition to this Agreement or any of the exhibits hereto shall be effective unless in writing signed by all parties.

8.6 Compliance with Laws. With respect to all actions taken hereunder, each of the Developer and the Government shall observe and obey and require all of its officers, employees, agents, suppliers and invitees to observe and obey all present and future Applicable Laws, seen or unforeseen.

8.7 Confidentiality. The parties recognize that each party may be required to deliver certain proprietary information to the other under the terms of this Agreement. Each party, upon receipt from the other party of any document designated as "Confidential" or "Proprietary" shall use reasonable efforts, subject to compliance with all Applicable Laws to protect the confidentiality of any such document and the information contained therein.

8.8 Remedies Cumulative. Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement (except as otherwise expressly limited by the terms of this Agreement), shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Agreement (except as otherwise expressly limited by the terms of this Agreement).

8.9 Multiple Counterparts. This Agreement may be executed in a number of identical counterparts. If so executed, all counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart, provided that photocopy or facsimile copies of all signatures are produced.

8.10 Anti-Deficiency Act. Nothing in this Lease shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act, 31 USC §1341, to the extent the Anti-Deficiency Act applies to such obligations or payments. The Department of the Army shall use its best efforts to seek additional appropriations in the event of any deficiency, but nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies.

8.11 Right to Purchase. In the event the any or all of the property in the Project is declared to be surplus or the base at **Installation** is closed or the Government otherwise desires to sell the Project or any part thereof, then the Developer shall be entitled to purchase any or all of the Property in the Project at a price equal to the fair market value thereof. Such right is exercisable by the Developer providing written notice thereof to the Government. The Developer shall be entitled to assign this right of purchase with respect to any property that is subject to a Ground Lease to the Ground Tenant under such Ground Lease. In the event the any or all of the property in the Project is declared to be surplus or the base at **Installation** is closed or the Government otherwise desires to sell the Project or any part thereof, the Government shall provide notice thereof to Developer, and shall not be entitled to convey same to person or entity, until Developer has been provided such notice and been provided the opportunity to exercise its rights hereunder.

8.12 Third Party Beneficiary. Developer shall have the right to name any Ground Tenant as a third party beneficiary of any or all the provisions hereof. The "Maintaining Party" under the Declaration shall be deemed a third party beneficiary of each of the obligations of the Government hereunder. Notwithstanding the foregoing, no Ground Tenant or Maintaining Party, or any sublessees or agents, officers or employees thereof or of any tier thereof, shall be entitled to enforce or pursue any rights or remedies with respect to such obligations to which it is a third party beneficiary unless and until Developer consents thereto in writing.

8.13 Intentionally Omitted.

8.14 Developer's Liability to Ground Tenants. Notwithstanding anything contained herein or in any Ground Lease, Developer shall have no liability to any Ground Tenant under this Agreement or any Ground Lease.

8.15 Recordation of this Agreement. At Developer's request, a short form of this Agreement or a memorandum of this Agreement, suitable for recordation, shall be executed and acknowledged by the parties hereto simultaneously with the execution of this Agreement, or thereafter at the request of Developer. If Developer requests such recordation, then any recordation costs charged in connection with such recordation shall be paid by Developer.

8.16 Late Payments. If the Government does not pay any amount when due to Developer hereunder, then, upon Developer making demand therefor, Developer shall be entitled to charge the Government interest, at the Interest Rate, on such unpaid amount and shall be entitled to off-set such amount and any accrued interest against any amounts payable or that may become payable by Developer or any Ground Tenant under this Agreement or any Ground Lease or any other agreement with the Government or any Ground Lease to which the Government is a party. Nothing in this Section 8.16 or any other provision in the Agreement shall be construed to limit any rights or remedies that Developer may have against the Government under the Prompt Payment Act (31 USC Sec 3901et seq.). The term "Interest Rate" the rate of interest established by the Secretary of the Treasury, and published in the Federal Register for interest payments under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), which is in effect at the time such interest accrues. Unless a specific time period is otherwise set forth herein, if the Government is required to pay Developer for any costs, expenses or other amounts, such costs, expenses or other amounts shall be due and payable within thirty (30) days after Developer provides the Government with notice of the amount thereof (with reasonable documentation of the such amounts).

8.17 Obligations Running with the Land. All obligation of Government provided herein run with the land comprising the Project Site and shall burden such land; it being understood that any owner of such land or any portion thereof shall be subject to the obligations of the Government hereunder. In the event such land (or any portion thereof) is ever conveyed, the Government shall have the purchaser thereof execute such document as reasonably requested by Developer to confirm to Developer its assumption of such obligations.

8.18 Profit Participation Upon Assignment of this Agreement.

(a) In connection with the first assignment of this Agreement (other than as security), if any, to an assignee in connection with an "arms length" transaction ("**First Qualified Agreement Assignment**"), the Developer shall pay to the Government, upon such assignment being effective, an amount equal to the Assignment Participation Amount (hereinafter defined).

(b) No Assignment Participation Amount shall be paid in connection with any financing or refinancing by Developer or the receipt of any proceeds therefrom, or any exercise of any rights of the lender under the documents evidencing or securing such financing or refinancing. The Assignment Participation Amount shall only be paid in connection with

the First Qualified Agreement Assignment; it being understood that the Assignment Participation Amount shall not apply to any other assignment.

(c) The Assignment Participation Amount shall mean _____percent (___%) of the amount by which the price paid by the Qualified Assignee for the assignment of this Agreement (the "**Agreement Purchase Price**") exceeds the amount of Total Project Costs (as defined in Exhibit K hereto). If the Total Project Costs exceeds the Agreement Purchase Price, then no Assignment Participation Amount shall be payable hereunder.

[signatures on next page]

IN WITNESS WHEREOF, the United States of America (acting through the Secretary of the Army) and Developer have each executed this Master Agreement to Lease, as of the day and year first above written.

UNITED STATES OF AMERICA, acting by and
through the SECRETARY OF THE ARMY

By: _____
Secretary
Deputy Assistant Secretary (Installation and
Housing), Department of United States
Army

DEVELOPER

By: _____
Name:
Title:

EXHIBIT A
PROJECT SITE

MAP

All of that certain lot or parcel of land, lying, being and situate in

METES AND BOUNDS LEGAL DESCRIPTION

EXHIBIT B
FORM OF GROUND LEASE

EXHIBIT C
DEVELOPMENT CONCEPT PLAN

Map

Additional map

EXHIBIT D

FORM OF DECLARATION

(Covenants, Conditions, and Restrictions)

EXHIBIT E

TITLE COMMITMENT

[attached]

EXHIBIT F
LOCATION OF ALTERNATIVE ACCESS

As applicable show map

EXHIBIT G

DESIGN REVIEW PROCESS

It is agreed that Developer will develop plans and necessary specifications for completion of the Improvements for any Lease Premises and for any Infrastructure Improvements in accordance with the following process. At anytime that Developer has identified a portion of the Project that it is contemplating identifying as a Lease Premises (whether or not Developer has provided to the Government a Notice of Closing with respect to such Lease Premises) or contemplating constructing any Infrastructure Improvements, Developer shall be entitled to submit to the Government, for its approval, the conceptual plans and specifications for the Improvements to be constructed on such Lease Premises and/or the improvement that will constitute the Infrastructure Improvements, as follows:

(A) Developer shall deliver to the Government a general schematic plan and preliminary architectural elevations ("Preliminary Plans") for the Improvements and/or any Infrastructure Improvements and request in writing approval thereof.

(B) Within () business days after Developer delivers to the Government the Preliminary Plans, the Government shall deliver to Developer in writing its approval of the Preliminary Plans or reasonable changes to the Preliminary Plans that will be required to obtain the Government's approval.

(C) After the Government delivers to Developer its required revisions to the Preliminary Plans, if any, Developer shall deliver to the Government revised Preliminary Plans containing the required revisions and any such suggested revisions as Developer chooses to incorporate.

(D) Within () business days after Developer delivers to the Government revised Preliminary Plans, the Government shall deliver its confirmation that all required revisions have been made and its approval of the revised Preliminary Plans.

(E) The Government shall not unreasonably withhold or condition its approval to the Preliminary Plans; it being understood that the Government's changes shall be limited to reasonable changes required for (i) the plans and/or specifications or related Improvements and/or Infrastructure Improvements to compliance with applicable laws, or (ii) the external design of the Improvements and/or Infrastructure Improvements to be reasonably compatible with the **Installation's** then existing improvements. In addition, in the event the Government fails to provide its approval or reasonable changes required for such approval in accordance with the foregoing within any of the foregoing periods required, then such approval shall be deemed given.

(F) No approval by the Government of any Improvements or Infrastructure Improvements or any detailed or final plans or specifications for such Improvements or Infrastructure Improvements shall be required under the Agreement or any Ground Lease, provided such items are reasonably consistent with the Preliminary Plans approved by the Government.

EXHIBIT H

FORM OF RELEASE

THIS RELEASE ("Release") is made this _____ day of _____, 200_, by the UNITED STATES OF AMERICA, acting by and through the SECRETARY OF THE ARMY ("**Secretary**"), hereinafter referred to as the "**Government**" for the benefit of **Developer**. ("**Developer**").

WITNESSETH

WHEREAS, pursuant to that certain Master Agreement to Lease, between the Government and Developer, dated _____, the Government, as lessor entered into that certain Enhanced Use Lease (the "Lease") with _____, as lessee, for certain real property, as more particularly set forth in the Lease;

WHEREAS, the Master Agreement provides that Developer remain liable for all of the obligations of lessee under the Lease, until the condition for Developer's release has occurred, as more particularly set forth therein;

WHEREAS, the Government acknowledges and agrees that the Release Date (as defined in the Master Agreement) with respect to the Lease has occurred, and the Government has agreed to release Developer from any and all liability under the Lease, all as more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, Ten Dollars (\$10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

The Government, for itself and its successors and assigns, hereby absolutely and unconditionally releases Developer, and their respective officers, directors, members, employees, agents and their respective heirs, successors and assigns, from any and all claims, actions, demands, damages, judgments, expenses, obligations and liabilities, whether accrued or unaccrued, known or unknown, arising in law or equity, past, present or future, and in any way relating to or arising from or in connection with the Lease.

IN WITNESS WHEREOF, the undersigned has executed this Unconditional Release by authority of the Secretary of the Army as of the date first above written.

UNITED STATES OF AMERICA

By: _____

Name:

Title:

EXHIBIT I

AVAILABLE SERVICES UNDER INTER-SERVICES SUPPORT AGREEMENT

SAMPLE OF SERVICES

1. Disaster Preparedness
2. Entomology Services
3. Environmental Compliance-Energy Conservation
4. Fire and Emergency Response Services
5. Grass Mowing
6. Ice and Snow Removal
7. Intelligence Security/Counter Intelligence
8. Law Enforcement
9. Maintenance and Repair of Facilities (SRM)
10. Security Matters/Anti-Terrorism
11. Utilities – Real Property Services (RPS)

EXHIBIT J

PROJECT SITE DESIGN GUIDELINES

[to be attached when prepared by Developer and approved by the Government]

Note: The parties agree that the fact that the Project Site Design Guidelines will be attached after execution of the Master Agreement to Lease shall not affect the validity or enforceability of the Master Agreement to Lease.

EXHIBIT K

DEFINITION OF TOTAL GROUND LEASE PROJECT COSTS

With respect to any Ground Lease, the "**Total Ground Lease Project Costs**" shall mean (i) all Applicable Ground Lease Project Costs (hereinafter defined) relating to such Ground Lease, and (ii) a share of the Total Project Costs (herein after defined) allocated by Developer to such Ground Lease. With respect to any Ground Lease, "**Applicable Ground Lease Project Costs**" shall mean all costs and expenses incurred (or committed to be incurred) by Ground Tenant in connection with or attributable to the Ground Lease, the Project, the Lease Premises that is subject to such Ground Lease ("**Applicable Lease Premises**") and/or any improvements (including the initial Improvements) relating thereto, including any amounts which are payable or deferred and are not assumed by the Qualified Ground Lease Purchaser. With respect to any Ground Lease, Applicable Ground Lease Project Costs shall include, without limitation, the following costs and expenses incurred (or committed to be incurred) by Ground Tenant:

1. all costs and expenses incurred in connection with the Ground Lease and the entity comprising the Ground Tenant, including without limitation, all entity formation costs, title insurance premiums, transfer and recording taxes and expenses (except to the extent reimbursed by Ground Lessor), if any, brokerage commissions, closing and escrow costs and expenses, attorneys' fees and all drafting, negotiation and transaction costs; and all costs and expenses incurred in connection with any other agreement relating to the Project, the Ground Lease, the Applicable Lease Premises or any improvements relating thereto, including without limitation construction contracts, architectural contracts, utility contracts, and the Declaration;

2. all costs and expenses incurred in connection with any due diligence or inspection relating to the Applicable Lease Premises, the Project, the economic viability of the Ground Lease or the Project and plans and surveys, studies, market analysis and engineering or environmental assessments relating to the Applicable Lease Premises or the Project;

3. all hard and soft costs and expenses in connection with the improvements relating to the Applicable Lease Premises (including the initial Improvements) or Project and the ownership, operation, construction and management of the Applicable Lease Premises, including without limitation all design and engineering costs, excavation and land costs, landscaping and land improvement costs, permitting costs, construction costs and fees (including without limitation, construction costs, overhead, general conditions and profits paid to any contractor), construction management fees and development fees (other than those paid to Affiliates of Ground Tenant, which are provided for in item 6 below); consulting fees, property management fees, all construction financing costs, including all payments of interest on any loans secured by or procured in connection with the construction of improvements on the Applicable Lease Premises, together with any points, loan fees; and all capital equipment, improvements or other capital expenditures relating to the Project, the Applicable Lease Premises or any improvements thereon;

4. all ground rent (and any other payments under the Ground Lease), taxes and assessments (net of reimbursement from Ground Lessor), if any, interest, utility charges and operating expenses paid or incurred (or committed to be incurred) prior to the Stabilization Date (hereinafter defined). The "Stabilization Date" shall mean the date that the cumulative amount of the rent actually received from the Applicable Lease Premises, exceeds the cumulative amount of all ground rent (and any other payments under the Ground Lease), taxes and assessments (net of

reimbursement from Ground Lessor), if any, debt service, utility charges and operating expenses paid or incurred (or committed to be incurred) by Ground Tenant;

5. all costs and expenses incurred in connection with the construction of leasehold improvements in any building built on the Applicable Lease Premises or in connection with procuring tenants or other occupants (or potential tenants or occupants) for such building, including any leasing commissions, rent abatements or credits, moving expenses, lease buy-out costs, construction or other allowances or other concessions granted to any tenant or occupant at the Applicable Lease Premises;

6. the following amounts, which shall be deemed to be incurred by Ground Tenant (whether or not actually paid): (i) a construction management fee (the "Affiliate Construction Management Fee" in the amount of ____ percent (____%) of all hard construction costs incurred by Ground Tenant relating to the Applicable Lease Premises (including without limitation, all amounts paid to the contractor for construction costs, overhead and profit and general conditions and permitting fees), and (ii) a development fee (the "Affiliate Development Fee") in the amount of ____ percent (____%) of the Total Ground Lease Project Costs (other than the Affiliate Development Fee and Affiliate Construction Management Fee);

7. any reserve or holdback established based on Ground Lessor's estimate of the cost to complete any warranty or punchlist work or to satisfy any contingent liability (including any threatened or pending litigation relating to any one or more of the costs or expenses) or other matter or to provide for adequate reserves for operation, maintenance and repair of the Applicable Lease Premises; and

8. all costs and expenses incurred in connection with the conveyance and assignment of the Ground Lease, including all attorneys fees, commissions and taxes.

"Total Project Costs" shall mean all costs and expenses incurred (or committed to be incurred) by Developer in connection with or attributable to the Project (including Infrastructure Improvements and other improvements comprising the Project), including any amounts which are payable or deferred and are not assumed by any Ground Tenant. Total Project Costs shall include without limitation, (i) due diligence or inspection costs relating to the Project, costs relating to the economic viability of the Project and procurement and award of the Project, costs for plans and surveys, studies, market analysis and engineering or environmental assessments relating to the Project, traffic studies, market analysis, engineering or environmental assessments of the Project, transaction costs to negotiate the Master Agreement, Business Plan, form of Ground Lease, form of Declaration and any other agreements relating to the project including any construction, design, or utility agreements or any Service Support Agreement (collectively, **"Applicable Agreements"**), (ii) all costs and expenses incurred in connection with the engineering, design, permitting or construction (hard and soft costs) of improvements with respect to the Project including, without limitation any consulting fees, road improvements or off-site improvements or contributions to improvements, facilities or operations located on or in any way connected with the Project, any impact or like development fee, utility connection or use charge, park or dedication fee or other charge, (iii) off-site expenditures relating to the Project and any amounts payable to the Government under any of the Applicable Agreements, including Article 3 of the Master Agreement, (iv) all financing costs, including any construction or permanent financing and all debt service thereon, together with any points, loan fees and other financing costs; (v) operating costs and expenses (including general and administrative expenses) incurred in connection with or allocable to the Project, and (vi) any expenditure of any kind

relating to the ownership, construction, maintenance, or operation of the Project or any part thereof. The portion of the Total Project Costs allocable to any Ground Lease shall be determined by Developer.

All costs and expenses comprising Applicable Ground Lease Project Costs or Total Project Costs described herein shall include amounts which are payable to Developer or any Affiliate of Developer, but only to the extent such payments are comparable to fair market value rates that would be payable to an independent third party vendor.